

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/CS/SB 778

INTRODUCER: Governmental Oversight and Accountability Committee, Community Affairs Committee and Senator Hays

SUBJECT: Local Government Construction Preferences

DATE: March 18, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 778 prohibits any local laws that give preference to a local contractor in circumstances involving a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds. The bill requires a state agency or subdivision subject to this law to disclose whether payment will be made from state-appropriated funds and the percentage of such funds compared to the total cost, if known. The bill does not prohibit the application of a local preference in a competitive solicitation for construction services in which less than 50 percent of the cost will be paid from state-appropriated funds.

II. Present Situation:

Procurement of Construction Services

Chapter 255, F.S., specifies procedures to be followed in the procurement of construction services for public property and publicly owned buildings. Section 255.29, F.S., requires the Department of Management Services (DMS) to establish, through the adoption of rules,¹ the following construction contract procedures:

¹ Chapter 60D-5, F.A.C., establishes the procedures for s. 255.29, F. S., which requires procedures be followed in advertising for bids for construction contracts; in determining the eligibility of potential bidders to submit proposals for construction contracts; in awarding construction contracts; for waiver of non-material bid deviations; for rejection of bids; for disqualification of contractors; and in requesting authority to negotiate contracts and in negotiating contracts.

- For determining the qualifications and responsibility of potential bidders prior to advertising for and receiving bids on building construction contracts, including procedures for the rejection of bidders who are reasonably determined from prior experience to be unqualified or irresponsible to perform the work required by a proposed contract;
- For awarding each state agency construction project to the lowest qualified bidder, as well as procedures to be followed in cases in which DMS declares a valid emergency to exist which would necessitate the waiver of the rules governing the awarding of state construction contracts to the lowest qualified bidder;
- For governing negotiations for construction contracts and contract modifications if negotiations are determined to be in the best interest of the state by the DMS secretary; and
- For entering into performance-based contracts for the development of public facilities if the contracts are determined to be in the best interest of the state.
- These procedures must include, but are not limited to:²
 - Prequalification of bidders;
 - Criteria to be used in developing requests for proposals which may provide for singular responsibility for design and construction, developer flexibility in material selection, construction techniques, and application of state-of-the-art improvements;
 - Accelerated scheduling, including the development of plans, designs, and construction simultaneously; and
 - Evaluation of proposals and award of contracts considering such factors as price, quality, and concept of the proposal.

State contracts for construction projects estimated to cost in excess of \$200,000 must be competitively bid.³ County, municipal, or other political subdivision contracts for construction projects that are projected to cost in excess of \$200,000 must also be competitively bid.⁴ Counties, municipalities, special districts,⁵ or other political subdivisions seeking to construct or improve a public building must competitively award the project if the projected cost exceeds \$300,000.⁶ To “competitively award” a project means to award the contract based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation.⁷ Counties, municipalities, special districts, and other political subdivisions may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process.⁸

Section 255.0525, F.S., requires the solicitation of competitive bids or proposals for any state construction project projected to cost more than \$200,000 to be publicly advertised in the Florida Administrative Register (FAR) at least 21 days before the established bid opening.⁹ If the construction project is projected to exceed \$500,000, the advertisement must be published in the

² Section 255.29(4)(a)-(d), F.S.

³ Section 255.0525(1), F.S. Also, see Rules 60D-5.002(2)(d) and 60D-5.0073(4), F.A.C.

⁴ Section 255.0525(2), F.S.

⁵ Section 255.20(1), F.S. (Special district as defined in ch. 189, F.S.)

⁶ *Id.* For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000.

⁷ *Id.*

⁸ *Id.*

⁹ Section 255.0525(1), F.S.

FAR at least 30 days before the bid opening and also in a newspaper of general circulation in the county where the project is located at least 30 days before the bid opening.¹⁰

Florida Preference to State Residents

Florida law provides a preference for the employment of state residents in construction contracts funded by money appropriated with state funds.¹¹ Such contracts must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work if state residents have substantially equal qualifications¹² to those of non-residents.¹³ If a construction contract is funded by local funds, the contract may contain such a provision.¹⁴ In addition, a contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system.¹⁵

III. Effect of Proposed Changes:

Section 1 creates s. 255.0991, F.S., to prohibit local ordinances or regulations that give preference to a local contractor in circumstances involving a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds. Specifically, the bill prohibits a state college, county, municipality, school district, or other political subdivision from using a local ordinance or regulation that provides a preference based upon the contractor:

- Maintaining an office or place of business within a particular local jurisdiction;
- Hiring employees or subcontractors from within a particular local jurisdiction; or
- Making prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

When 50 percent or more of the costs will be paid from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision must disclose in the solicitation document the amount of such funds or the percentage of such funds as compared to the anticipated total cost of the construction services.

The bill also provides that except for when 50 percent or more of the costs for construction services will be funded from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision is not prevented from awarding a contract to a contractor in accordance with applicable state laws or local ordinances or regulations.

Section 2 provides an effective date of July 1, 2015.

¹⁰ *Id.* Similar publishing provisions apply to construction projects projected to cost more than \$200,000 for counties, municipalities, and political subdivisions. *See* Section 255.0525(2), F.S.

¹¹ Section 255.099(1), F.S.

¹² Section 255.099(1)(a), F.S., defines "substantially equal qualifications" as the "qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons."

¹³ Section 255.099(1), F.S.

¹⁴ *Id.*

¹⁵ Section 255.099(1)(b), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may result in more business being awarded to state certified contractors as a result of prohibiting certain local ordinances and regulations that may otherwise restrict a non-local contractor from competing.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 255.0991 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on March 17, 2015:

Rather than amending s. 287.084, F.S., the CS creates a new section in ch. 255, F.S., that prohibits a state college, county, municipality, school district, or other political

subdivision from providing a local preference to contractors in competitive solicitations for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds.

CS by Community Affairs on March 4, 2015:

Provides that state-appropriated funds do not include any federal aid funds for purposes of this section.

Raises the percentage of funding that must be derived from state-appropriated funds in order to prohibit application of a local preference from 20 percent to 50 percent.

Changes the word “vendor” to “contractor” throughout the bill.

B. Amendments:

None.